

HOUSE BILL No. 1305

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Renewable energy. Requires the utility regulatory commission (IURC) to consider in the rate base of a public utility that complies with certain renewable energy standards (RES) any capital expenditures made by the public utility to extend gas or electric service to a customer that produces biofuels. Requires the IURC to provide certain financial incentives for implementing electric line facilities projects to electricity suppliers that comply with a certain RES. Requires electricity suppliers to comply with an RES by specified dates. Provides that an electricity supplier that does not comply with a higher RES is not eligible for certain financial incentives related to renewable energy development.

Effective: Upon passage; July 1, 2009.

Grubb, Koch

January 13, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1305

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-23.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 23.1. (a) This section applies to a public utility that**
4 **complies with the schedule set forth in IC 8-1-37-5(b).**

5 **(b) For purposes of section 23 of this chapter, the construction,**
6 **addition, extension, or improvement of a public utility's plant or**
7 **equipment to provide electric or gas service to a customer that**
8 **produces biodiesel, ethanol, or any other biofuel is in fact used and**
9 **useful in the public service.**

10 **(c) This subsection applies to a public utility's general rate**
11 **proceeding that immediately follows the public utility's investment**
12 **in a construction, an addition, an extension, or an improvement**
13 **described in subsection (b). A public utility may accrue for**
14 **recovery in the rate proceeding a return not to exceed fifty million**
15 **dollars (\$50,000,000) on the public utility's investment at the rate**
16 **of return authorized by the commission in the public utility's**
17 **general rate proceeding immediately preceding the investment.**



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The accrual of a return by a public utility under this subsection:

(1) begins on the date the public utility initially records the investment in the public utility's books or records, as determined by the commission; and

(2) ends on the earlier of the following dates:

(A) The date on which the public utility accrues the full return determined under this subsection.

(B) December 31, 2016.

However, the rate of return authorized by the commission shall be calculated under a formula that extends beyond December 31, 2016.

(d) Notwithstanding subsection (c), the commission shall revoke a cost recovery approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

(e) This section expires December 31, 2016.

SECTION 2. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 8.4. Electric Line Facilities Projects

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

Sec. 2. As used in this chapter, "electric line facilities" means the following:

(1) Overhead or underground electric transmission lines.

(2) Overhead or underground electric distribution lines.

(3) Electric substations.

Sec. 3. As used in this chapter, "electric line facilities project" means an addition to or the construction, operation, maintenance, reconstruction, relocation, upgrading, or removal of electric line facilities.

Sec. 4. As used in this chapter, "electricity supplier" means a public utility that furnishes retail electric service to the public.

Sec. 5. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1.

Sec. 6. As used in this chapter, "regional transmission organization" refers to the regional transmission organization approved by the Federal Energy Regulatory Commission for the control area in which an electricity supplier operated electric line facilities.

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1 **Sec. 7.** As used in this chapter, "renewable energy resources"
2 has the meaning set forth in IC 8-1-37-4.

3 **Sec. 8.** This chapter applies to an electricity supplier that
4 complies with the schedule set forth in IC 8-1-37-5(b).

5 **Sec. 9. (a)** The commission shall encourage electric line facilities
6 projects by creating the following financial incentives for electric
7 line facilities that are reasonable and necessary:

8 (1) The timely recovery of costs incurred by an electricity
9 supplier in connection with an electric line facilities project
10 that transmits or distributes electricity generated from
11 renewable energy resources.

12 (2) The timely recovery of costs, by means of a periodic rate
13 adjustment mechanism, incurred by an electricity supplier
14 taking service under a tariff of, or being assessed costs by the:

15 (A) regional transmission organization; or

16 (B) Federal Energy Regulatory Commission.

17 **(b)** The commission shall determine a reasonable schedule
18 under which an electricity supplier may recover costs under this
19 section. In making a determination under this subsection, the
20 commission shall consider the impact of the cost recovery on
21 ratepayers of the electricity supplier. A schedule determined under
22 this subsection must extend beyond December 31, 2016.

23 **Sec. 10. (a)** Subject to subsection (h), an electricity supplier must
24 submit an application to the commission for approval of an electric
25 line facilities project for which the electricity supplier seeks to
26 receive a financial incentive created under section 9 of this chapter.

27 **(b)** The commission shall prescribe the form for an application
28 submitted under this section.

29 **(c)** Upon receipt of an application under subsection (a), the
30 commission shall review the application for completeness. The
31 commission may request additional information from an applicant
32 as needed.

33 **(d)** The commission, after notice and hearing, shall issue a
34 determination of an electric line facilities project's eligibility for
35 the financial incentives described in section 8 of this chapter not
36 later than one hundred eighty (180) days after the date of the
37 application. A determination under this subsection must include a
38 finding that the applicant electricity supplier is in compliance with
39 the schedule set forth in IC 8-1-37-5(b).

40 **(e)** Subject to subsections (g) and (h), the commission shall
41 approve an application by an electricity supplier for an electric line
42 facilities project that is reasonable and necessary. An electric line

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facilities project is presumed to be reasonable and necessary if the electric line facilities project:

(1) is consistent with, or part of, a plan developed by the:

(A) regional transmission organization; or

(B) Federal Energy Regulatory Commission; or

(2) transmits or distributes electricity generated from renewable energy resources.

(f) This section does not relieve an electricity supplier of the duty to obtain any certificate required under IC 8-1-8.5 or IC 8-1-8.7.

(g) The commission shall not approve a financial incentive for that part of an electric line facilities project that exceeds the lesser of:

(1) seven percent (7%) of the electricity supplier's rate base approved by the commission in the electricity supplier's most recent general rate proceeding; or

(2) one hundred fifty million dollars (\$150,000,000).

(h) The commission may not approve a financial incentive under section 9 of this chapter for a particular electricity supplier if the commission has approved a financial incentive under section 9 of this chapter in the preceding twelve (12) months for that electricity supplier, unless the commission determines that approving a particular financial incentive for an electricity supplier on a more timely basis will benefit the electricity supplier's ratepayers.

Sec. 11. The commission shall revoke all financial incentives approved under this chapter for an electricity supplier that the commission determines has:

(1) elected to; and

(2) failed to;

comply with the schedule set forth in IC 8-1-37-5(b).

Sec. 12. This chapter expires December 31, 2016.

SECTION 3. IC 8-1-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 37. Renewable Energy Development

Sec. 1. (a) As used in this chapter, "electricity supplier" means a public utility (as defined in IC 8-1-2-1) that furnishes retail electric service to the public.

(b) The term does not include a utility that is a:

(1) municipally owned utility (as defined in IC 8-1-2-1(h));

(2) corporation organized under IC 8-1-13; or

(3) corporation organized under IC 23-17 that is an electric

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cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 2. As used in this chapter, "regional transmission organization" refers to a regional transmission organization approved by the Federal Energy Regulatory Commission for the geographic area in which an electricity supplier's assigned service area (as defined in IC 8-1-2.3-2) is located.

Sec. 3. As used in this chapter, "renewable energy credit", or "REC", means one (1) megawatt hour of electricity that is:

- (1) generated from a renewable energy resource described in section 4(a) of this chapter;
- (2) quantifiable; and
- (3) possessed by not more than one (1) entity at a time.

Sec. 4. (a) As used in this chapter, "renewable energy resources" includes the following sources and programs for the production or conservation of electricity:

- (1) Methane systems that convert waste products, including animal, food, and plant waste, into electricity.
- (2) Methane recovered from landfills.
- (3) Wind.
- (4) Solar photovoltaic cells and panels.
- (5) Clean coal and energy projects (as defined in IC 8-1-8.8-2).
- (6) Dedicated crops grown for energy production.
- (7) Energy from waste to energy facilities producing steam not used for the production of electricity.

(b) Except as provided in subsection (a)(7), the term does not include energy from the incineration, burning, or heating of the following:

- (1) Garbage.
- (2) General household, institutional, or commercial waste.
- (3) Industrial lunchroom or office waste.
- (4) Landscape waste.
- (5) Construction or demolition debris.
- (6) Feedstock that is municipal, food, plant, industrial, or animal waste from outside Indiana.

Sec. 5. (a) Each electricity supplier shall supply electricity under a schedule set forth in either subsection (b) or (c).

(b) In order to qualify for a financial incentive under IC 8-1-2-23.1, IC 8-1-8.4-9, or section 9 of this chapter, an electricity supplier shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity

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supplied by the electricity supplier to Indiana customers during a calendar year as follows:

(1) Not later than the calendar year ending December 31, 2010, at least three percent (3%).

(2) Not later than the calendar year ending December 31, 2015, at least six percent (6%).

(3) Not later than the calendar year ending December 31, 2020, at least ten percent (10%).

(4) Not later than the calendar year ending December 31, 2025, at least fifteen percent (15%).

For purposes of this subsection, electricity is measured in megawatt hours.

(c) An electricity supplier that elects not to comply with subsection (b) shall supply electricity that is generated from renewable energy resources described in section 4(a) of this chapter to Indiana customers as a percentage of the total electricity supplied by the electricity supplier to Indiana customers during a calendar year as follows:

(1) Not later than the calendar year ending December 31, 2010, at least one and five-tenths percent (1.5%).

(2) Not later than the calendar year ending December 31, 2015, at least four percent (4%).

(3) Not later than the calendar year ending December 31, 2020, at least seven percent (7%).

(4) Not later than the calendar year ending December 31, 2025, at least ten percent (10%).

For purposes of this subsection, electricity is measured in megawatt hours.

(d) An electricity supplier may own or purchase RECs to comply with subsection (b) or (c), as applicable.

(e) An electricity supplier may not use a renewable energy resource described in section 4(a)(5) of this chapter to generate more than twenty-five percent (25%) of the electricity that the electricity supplier is required to supply under subsection (b) or (c), as applicable.

(f) If an electricity supplier exceeds the applicable percentage under subsection (b) or (c) in a compliance year, the electricity supplier may carry forward the amount of electricity that:

(1) exceeds the applicable percentage under subsection (a); and

(2) is generated from renewable energy resources in an Indiana facility;

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to comply with the requirement under subsection (b) or (c) for either or both of the two (2) immediately succeeding compliance years.

Sec. 6. (a) An electricity supplier that elects to, and fails to, comply with the schedule set forth in section 5(b) of this chapter is no longer eligible for financial incentives as provided in IC 8-1-2-23.1(d), IC 8-1-8.4-11, or section 9(c) of this chapter, as applicable.

(b) An electricity supplier described in subsection (a) shall comply with the schedule set forth in section 5(c) of this chapter beginning in the compliance year in which the electricity supplier fails to comply with the schedule set forth in section 5(b) of this chapter.

Sec. 7. (a) This section applies to an electricity supplier that is required to, and fails to, comply with the schedule set forth in section 5(c) of this chapter.

(b) Beginning January 1, 2011, and annually thereafter, the commission shall determine whether an electricity supplier is in compliance with the schedule set forth in section 5(c) of this chapter. The commission shall make a determination under this subsection not later than March 1 of each year.

(c) If the commission determines that an electricity supplier is not in compliance with the schedule, the commission shall impose a reasonable monetary penalty on the electricity supplier. In determining the amount of the monetary penalty, the commission shall consider the efforts made by the electricity supplier in attempting to comply with the schedule.

(d) If the commission determines not later than December 31 of a year that an electricity supplier against whom a monetary penalty was imposed under subsection (c) has achieved compliance with the schedule the commission may refund all or part of the monetary penalty imposed on the electricity supplier for that calendar year.

Sec. 8. (a) An electricity supplier is not required to timely comply with section 5(b) or 5(c) of this chapter, as applicable, if the commission determines that the electricity supplier has demonstrated that the cost of compliance with section 5(b) or 5(c) of this chapter, as applicable, using the renewable energy resources available to the electricity supplier would result in an unreasonable increase in the basic rates and charges for electricity supplied to customers of the electricity supplier. The commission shall conduct a public hearing to make a determination under this section.

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(b) If the commission determines under a hearing conducted under subsection (a) that the cost of compliance with section 5(b) or 5(c) of this chapter, as applicable, would result in an unreasonable rate increase, the commission shall extend the applicable deadline imposed under section 5(b) or 5(c) of this chapter. If the commission extends a deadline under this subsection, the commission shall consider whether subsequent deadlines imposed under section 5(b) or 5(c) of this chapter, as applicable, also should be extended.

Sec. 9. (a) The commission shall allow an electricity supplier that complies with the schedule set forth in section 5(b) of this chapter to recover reasonable and necessary costs incurred in:

(1) constructing, operating, or maintaining facilities to comply with this chapter; or

(2) generating electricity from, or purchasing electricity generated from, a renewable energy resource;

by a periodic rate adjustment mechanism.

(b) Except as provided in subsection (c), the recovery of costs by a periodic rate adjustment mechanism under subsection (a) expires on the earlier of the following dates:

(1) The date on which the electricity supplier recovers under the period rate adjustment mechanism all costs allowed under subsection (a).

(2) December 31, 2016.

(c) The commission shall revoke a periodic rate adjustment mechanism allowed under subsection (a) for an electricity supplier that the commission determines:

(1) is required to; and

(2) has failed to;

comply with section 5(b) of this chapter.

Sec. 10. (a) For purposes of calculating RECs to determine an electricity supplier's compliance with section 5(b) or 5(c) of this chapter, as applicable, the following apply:

(1) Except as provided in subdivision (2), one (1) megawatt hour of electricity generated from renewable energy resources in an Indiana facility equals one (1) REC.

(2) One (1) megawatt hour of electricity generated from a renewable energy resource described in section 4(a)(1) or 4(a)(2) of this chapter that originates in Indiana equals two (2) RECs.

(3) One (1) megawatt hour of electricity that is:

(A) generated from a renewable energy resource in the

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1 territory of a regional transmission organization; and
 2 (B) imported into Indiana;
 3 equals five-tenths (0.5) REC.
 4 (b) Electricity generated by any source outside the territory of
 5 a regional transmission organization may not be considered for
 6 purposes of calculating an REC to determine an electricity
 7 supplier's compliance with section 5(b) or 5(c) of this chapter, as
 8 applicable.
 9 (c) An electricity supplier may not apportion all or part of a
 10 single megawatt of electricity among more than one (1):
 11 (1) renewable energy resource; or
 12 (2) category set forth in subsection (a);
 13 in order to comply with section 5(b) or 5(c) of this chapter, as
 14 applicable.
 15 Sec. 11. The Indiana economic development corporation, in
 16 consultation with the commission, shall develop a strategy to
 17 attract renewable energy component manufacturing and assembly
 18 facilities to Indiana.
 19 Sec. 12. Beginning in 2016, not later than March 1 of each year,
 20 an electricity supplier shall file with the commission a report of the
 21 electricity supplier's compliance with this chapter for the
 22 preceding calendar year.
 23 Sec. 13. The commission shall adopt rules under IC 4-22-2 to
 24 implement this chapter. A rule adopted under this section may
 25 establish a procedure by which an electricity supplier that initially
 26 elects to comply with the schedule set forth in section 5(c) of this
 27 chapter may later comply with the schedule set forth in section 5(b)
 28 of this chapter.
 29 SECTION 4. An emergency is declared for this act.

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